

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs August 10, 2004

**MICHAEL D. O'GUIN v. KEVIN MYERS, WARDEN**

**Direct Appeal from the Circuit Court for Wayne County  
No. 13149 Robert Holloway, Judge**

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**No. M2003-02846-CCA-R3-HC - Filed October 12, 2004**

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The Petitioner, Michael D. O'Guin, pled guilty in 1998 to one count of child rape, and the trial court sentenced the Petitioner to fifteen years in prison, as a Range I standard offender, at thirty percent. The trial court then amended the original judgment within thirty days and ordered the Petitioner's sentence to be served at one hundred percent, with the possibility of a fifteen percent reduction based on sentence reduction credits. The Petitioner filed a petition for a writ of habeas corpus, which the trial court denied. On appeal, the Petitioner contends that the trial court erred by dismissing his petition because the original judgment was void, making the amended judgment also void. After reviewing the record and relevant authorities, we conclude that the amended judgment is not void, and the trial court's dismissal of the petition is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and NORMA MCGEE OGLE, JJ., joined.

Kenneth K. Crites, Centerville, Tennessee, for the appellant, Michael D. O'Guin.

Paul G. Summers, Attorney General and Reporter; Richard H. Dunavant and Elizabeth T. Ryan, Assistant Attorneys General; T. Michel Bottoms, District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Facts**

In 1998, the Lewis County Grand Jury indicted the Petitioner, Michael D. O'Guin, on fifteen counts of child rape. The Petitioner pled guilty to one count of child rape, pursuant to a plea agreement, and, on June 10, 1998, the trial court sentenced the Petitioner to fifteen years in prison, as a Range I standard offender, at thirty percent. The trial court amended the original judgment on July 8, 1998, and ordered that the sentence be served at one hundred percent, with the possibility of a fifteen percent reduction based on sentence reduction credits.

In 2003, the Petitioner filed a petition for writ of habeas corpus in which he alleged that the sentence imposed by the trial court in the original judgment was an illegal sentence because the trial court was without authority to sentence him as a Range I standard offender with a thirty percent release eligibility. The Petitioner claims that the sentence was not a statutorily authorized punishment for the offense of child rape. The trial court dismissed the petition on October 16, 2003, finding that the Petitioner's claim, considered in the light most favorable to him, would render his conviction voidable and not void and, therefore, he was not entitled to habeas corpus relief. On appeal, the Petitioner contends that the trial court erred when it denied his petition for writ of habeas corpus because the original judgment was void making the amended judgment also void since, according to Petitioner, "no amendment can cure" a void judgment.

## II. Analysis

Article I, section 15 of the Tennessee Constitution guarantees its citizens the right to seek habeas corpus relief and Tennessee Code Annotated sections 29-21-101 et seq. codify the applicable procedures for seeking a writ. However, the grounds upon which our law provides relief are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn.1999). A writ for habeas corpus "will issue only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that a court lacked jurisdiction or authority to sentence a defendant or that the sentence has expired." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn.2000); see also Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). "Unlike the post-conviction petition, the purpose of a habeas corpus petition is to contest void and not merely voidable judgments." Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). Therefore, in order to state a cognizable claim for habeas corpus relief, the petition must contest a void judgment. Id. "A void judgment is one in which the judgment is facially invalid because the court did not have the statutory authority to render such judgment . . . . A voidable judgment is one which is facially valid and requires proof beyond the face of the record or judgment to demonstrate its voidableness." Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998) (citing Archer, 851 S.W.2d at 161). A sentence imposed in direct contravention of a statute is illegal and therefore "void or voidable depending upon whether the illegality of the sentence is evident on the face of the judgment or the record of the underlying proceedings." McLaney v. Bell, 59 S.W.3d 90, 94 (Tenn. 2001) (citing Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000)), see also State v. Burkhart, 566 S.W.2d 871, 873 (Tenn. 1978).

The Petitioner bears the burden of showing by a preponderance of the evidence that the conviction is void or that the prison term has expired. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994), *superseded by statute as stated in State v. Newman*, No. 02C01-9707-CC-00266, 1998 WL 104492, at \*1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998), *no perm. app. filed*. Furthermore, the procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Archer, 851 S.W.2d at 165. Because the determination of whether habeas corpus relief should be granted is a question of law, our review is de novo with no presumption of correctness. Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000).

The Petitioner contends that his sentence is illegal because it improperly placed his conviction of child rape as a Range I standard offender with a thirty percent release eligibility. He correctly notes that Tenn Code Ann. section 40-35-501(i)(1)(1997)<sup>1</sup> states that this conviction requires the sentence be served at one hundred percent. The State contends that the original judgment is voidable, rather than void, because the trial court entered an amended judgment correcting the illegal sentence. The State further asserts that, according to the record, the amended judgment is the one that holds the Petitioner. We agree with the State.

This Court held in Lambert v. Morgan, No. M 2002-00172-CCA-RM-PC, 2002 WL 445070 (Tenn. Crim. App., at Nashville, Mar. 22, 2002), *perm. app. denied* (Tenn. Apr. 24, 2002), that a sentence contradicting a statute was illegal. In Lambert, the petitioner pled guilty to second degree murder and was sentenced to serve fifteen years as a Range I standard offender with a release eligibility of thirty percent. The petitioner filed a petition for writ of habeas corpus alleging that the sentence imposed was illegal because it was not statutorily authorized. Since the sentence directly contradicted the relevant statute, this Court held that the sentence was void and illegal and granted habeas corpus relief. Therefore, according to Lambert the original judgment in this case, which provided for an illegal sentence, would be void. However, the trial court corrected the judgment by issuing an amended judgment within thirty days before the judgment was final, which it has authority to do. See Clark v. State, No. W2004-00326-CCA-R3-CD, 2004 WL 1870059, at \*2 (Tenn. Crim. App., at Jackson, Aug. 28, 2004 ), *no perm. app. filed*. The amended judgment is the

judgment by which the Petitioner is being held. It clearly orders the correct sentence and the correct conviction, which meets the statutory requirements. Tenn. Code Ann. § 40-35-501(i)(1),  
(i)(2)(I)(1997).

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<sup>1</sup>Tenn. Code. Ann. section 40-35-501(i) provides:

- (1) There shall be no release eligibility for a person committing an offense on or after July 1, 1995, that is enumerated in subdivision (2). Such person shall serve one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%).
- (2) The offenses to which the provisions of subdivision (1) apply are: ... (I) Rape of a child....

### **III. Conclusion**

In accordance with the foregoing authorities and reasoning, we AFFIRM the trial court's judgment.

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ROBERT W. WEDEMEYER, JUDGE